

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1784 OF 2004

MRS. MARIUM NOOR MOHAMMAD SHAIKH)

residing at Dontad Cross Lane, )

Building No.12, Room No. 2, )

Gr.floor, Dongri, Mumbai 400 009 ) .. PETITIONER

Versus

1. SHRI A. N. ROY )

Commissioner of Police, )

Brihan Mumbai. )

2. THE STATE OF MAHARASHTRA )

3. THE SUPERINTENDENT )

Nasik Road Central Prison, )

Nasik ).. RESPONDENTS

Mr. U. N. Tripathi for petitioner

Mr. D. S. Mhaispurkar, APP

CORAM:-SMT. RANJANA DESAI &

A. S. OKA, JJ.

DATED:-3-12-2004

ORAL JUDGMENT:-(Smt. Ranjana Desai, J.)

The petitioner is the mother of one Nasir Husain Noor Mohammed Shaikh ("detenu" for convenience), who is detained by the Commissioner of Police, Brihan Mumbai under an order of detention dated 22nd July, 2004 issued under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 ("the said Act" for short) with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The order of detention, the grounds of detention and the material in support thereof were served on the detenu on 22nd July, 2004. In this petition, the said order of detention is challenged.

2. The order of detention is based on two C.Rs. and two incamera statements.

3. We have heard Mr. Tripathi, the learned counsel for the detenu and Mr.

Mhaispurkar, learned APP appearing for the State of Maharashtra.

4. Mr. Tripathi assailed the order of detention on two grounds. He submitted that the detaining authority has stated in the 1st paragraph of the grounds that the order of detention is based on grounds mentioned in paragraph 5 of the grounds of detention. Mr. Tripathi pointed out that in paragraph 5(b) it is stated that complainant Subhash Sandu Bagul, knows the detenu as notorious criminal, against whom some cases of robbery and assault were registered at Dharavi, Dongri and other police stations in Mumbai. It is further stated that the complainant knows that the detenu was wanted in connection with Dharavi Police Station C.R.No. 164/02 under Section 307, 34 IPC r/w Section 37(1)(a) of the Bombay Police Act, 1951. Mr. Tripathi contended that since paragraph 5(b) is a ground of detention and since there is a reference to C.R.No.164 of 2002 in that paragraph, it was obligatory on the detaining authority to supply material in connection with the said case to the detenu. Since there is also reference to number of cases of robbery and assault registered at Dharavi, Dadar and other police stations in Mumbai, the detaining authority ought to have supplied material in connection with the said cases also. He submitted that it is obvious that the detaining authority has relied upon the said cases and therefore, the material in support thereof should have been supplied to the detenu.

5. In reply to this ground the detaining authority has stated in his affidavit that the averments made in paragraph 5(b) of the grounds of detention contain merely introductory facts. These averments are made with a view to completing the narration of events leading to the identity of the detenu and his involvement in respect of C.R. No. 90 of 2004 registered at Dharavi Police Station, which is a ground of detention. The detaining authority has stated that he has merely made a passing reference to C.R. No. 164 of 2002 to complete the narration of events. He has not relied upon the said case for issuing the order of detention and, therefore, it was not necessary to supply to the detenu, copies of the documents in support of the said C.R. It is clarified that the present order of detention is based on C.R. No. 89 of 2004 and C.R. No. 90 of 2004 and two incamera statements and all the relevant materials in connection with the said cases and the copies of the said incamera statements have been supplied to the detenu. It is also stated that the averments made in paragraph 5(b) of the grounds of detention are also found in the complaint lodged by complainant Subhash Bagul in C.R. No. 90/04 and copy thereof has been supplied to the detenu.

6. We find the explanation given by the detaining authority to be satisfactory. A careful reading of the grounds of detention clearly indicates

that the order of detention is based on C.R. No. 89/04 and 90/04 and two incamera statements. There is no dispute that all the material in connection with these cases and two incamera statements have been supplied to the detenu. So far as paragraph 5(b) is concerned it contains the gist of the complaint lodged by Subhash Sandhu Bagul. A copy of the said complaint has been supplied to the detenu. Since the gist of this complaint is narrated in paragraph 5(b) and since the copy of the complaint is given to the detenu it cannot be said that the detenu is deprived of his right to make an effective representation under Article 22(5) of the Constitution of India. The basic documents have been supplied to the detenu. The detaining authority has carried out the mandate of Article 22(5) of the Constitution of India. This submission of Mr. Tripathi must, therefore, fail.

7. In this connection Mr. Tripathi relied on *Vashisht Narain Karwaria v. State of U.P. & Anr.*, (1990) 2 S.C.C. 629. In our opinion the said judgment will have to be confined to its on peculiar facts and will have no application to the facts of the present case. In that case police report making averments reflecting on character of detenu was furnished to the detenu. It was not referred to in the grounds of detention. It was the grievance of the petitioner that no particulars or details were given in the said report in regard to the alleged many cases/offences said to have been registered in various police

stations against the detenu. There was no denial in the counter filed on behalf of the respondent as regards this point. Such are not the facts here. Here the detaining authority has denied in the affidavit that there is any violation of Article 22(5) of the Constitution of India on account of non-supply of any documents. In connection with paragraph 5(b) of the grounds, it is stated that the complaint of Police Naik Bagul is supplied to the detenu and in the complaint the gist of the averments made in paragraph 5 have been stated. We find this explanation to be proper. In the facts of this case it can never be said that there was violation of detenu's right under Article 22(5) of the Constitution of India.

8. Mr. Tripathi then contended that the grounds of detention contain instances which affect law and order and not public order and, therefore, the detaining authority could not have issued the present detention order on the basis of the same. He submitted that there was no material before the detaining authority and none was supplied to the detenu to indicate that on account of the detenu's activities even tempo of life of society was disturbed. In the circumstances, the order of detention must be set aside on that ground.

9. We are unable to agree with Mr. Tripathi. The first incident pertains to a

complaint of Shabbir Husain Khan registered under Sections 323, 504, 324, 506(ii), 114 I.P.C. against the detenu and his associates on 5.5.2004 at Dharavi Police Station vide C.R. No. 89/04. It appears that in the night of 4.5.04 at about 21.00 hours the complainant had gone to meet his friend Shri Ramprasad Agarwal in his office at 90 feet Road, Dharavi. Thereafter the complainant and his friend Shri Agarwal went to Hotel Himalaya for taking food. At that time the detenu approached them and started arguing with Shri Agarwal. Hence the complainant asked him as to what had happened. The detenu threatened the complainant saying that he was a crime reporter and if he tries to act smart he would be shot dead. Thereafter the detenu and his associates went away. The complainant and Shri Agarwal then went to the office of Shri Agarwal and were sitting there. At about 00.30 hours on 5.5.04 the detenu's associates went to the office of Shri Agarwal and started abusing him. The complainant warned them and took them outside the office. However, the detenu's associate Bittu beat the complainant with fist blows. His other associates manhandled him. His associate Bittu picked up a stone and dealt a blow with it on the head of the complainant causing him bleeding injury. By the time the police rushed to the office of Shri Agarwal. The police overpowered the detenu's associate Bittu but his other associates escaped from the place by threatening the public. Due to fear complainant did not disclose the name of the detenu in the complaint. However, after the

detenu's arrest in Dharavi police station in C.R.No. 90/04 the complainant disclosed his name as being involved in this case. The manner of commission of this offence and other attendant circumstances indicate that this incident had affected public order. The associates of the detenu had threatened the public. It is significant to note that out of fear the complainant did not even disclose the detenu's name in the complaint. Only after the detenu was arrested in C.R. No. 90/04 that the complainant mustered courage and disclosed the detenu's name. This indicates the nature of the terror wave unleashed by the detenu. In our opinion, therefore, this incident affects public order.

10. The second case is C.R. No. 90/04 registered at Dharavi Police Station under Section 307, 324, 353, 332, 224, 34, 506(ii) IPC r/w Section 3, 25 Arms Act r/w 37(i)(a) 135 of the Bombay Police Act, 1951. Complainant in this case is Subhash Bagul. On 5.5.2004 at about 22.15 hours a notorious criminal Abdul Jabbar Mohamed Kasim Ansari, who is detenu's associate and his friend Salim alias Sallu were proceeding through Social Nagar, Dharavi. When they reached at Nurul Hudda Masjid, some local boys informed them that the detenu and his associates armed with deadly weapons were looking for Abdul Jabbar Mohammed Kasim Ansari and his friend Shakil Ahmad Shaikh for eliminating them. Hence Abdul Jabbar

Ansari and Salim Shaikh went to hide themselves in Abdul Jabbar Ansari's sister's house, at Naik Nagar Dharavi. When they reached in front of Hotel Welcome the detenu and his associate Rakesh emerged there. Rakesh accosted Abdul Jabbar Ansari. Rakesh gave a fist blow on Abdul Jabbar Ansari's face and abused him. He whipped out a chopper and gave a blow of chopper on the head of Abdul Jabbar Ansari and threatened that he will finish him. At that time the detenu whipped out a country made fire arm and threatened Abdul Jabbar Ansari with dire consequences. Due to this unprecedented incident people in the surrounding area were caught unawares and peace of the area was disturbed.

11. At about 22.20 hours someone phoned Dharavi Police Station and informed the police about the incident. The police party rushed to the spot. The police party noticed people running helter skelter. When complainant Police Naik Subhash Bagul rushed forward, he noticed that the detenu and his associate Rakesh were pointing out weapons and threatening the hawkers and passers-by. Due to this people started running helter skelter and shopkeepers pulled down the shutters of their shops. Panic prevailed in the locality. The detenu did not surrender to the police. He started threatening the police. The detenu's associate Rakesh advanced towards complainant Police Naik Subhash Bagul with a chopper and gave a blow of chopper on

his head. Subhash Bagul tried to ward off the blow but it landed on his right hand. He tried to hold the country made firearm which was in the hands of the detenu. In the scuffle it hit on his right temporal part.

12. Thereafter after making maximum efforts the police could arrest the detenu and his associate. We have no manner of doubt that this incident has affected public order. The detenu and his associate were moving with deadly weapons at a public place. They had given threats to kill Abdul Jabbar Ansari. Such an incident which had taken place in a busy area was bound to disturb public order. Moreover when the police arrived at the scene of offence the detenu and his associate tried to threaten them. The detenu's associate Rakesh tried to assault complainant Police Naik Subhash Bagul with a chopper. The complainant received injury in this incident. Even the detenu was brandishing his country made firearm. It hit the complainant. The detenu, therefore, was trying to subvert the authority of the police. The people residing in the area were bound to be terrorised because of such activities. This incident, therefore, squarely affects public order.

13. The detaining authority has then relied on two incamera statements, which were recorded on the condition of anonymity. Statement of witness A came to be recorded on 14.6.04. In this statement witness A has deposed

about an incident which had taken place in the first week of April 2004 at about 20-30 hrs. It appears from the statement that the detenu and his associate went to witness-A and threatened him at the point of chopper. They told him that in case he lodged his complaint with the police, he would be killed. While leaving detenu's associate Rakesh forcibly removed Rs.1200/- from the shirt pocket of witness-A. The detenu and his associates also threatened the passers-by and exhibited chopper at them. Because witness "A" apprehended danger to his life, he did not lodge any complaint.

14. Statement of witness-B was recorded on 12.6.04. In this statement witness B has deposed about an incident which had taken place in the third week of April 2004, at about 21.00 hours. It appears that when this witness was attending to his business, the detenu and his associate Rakesh came there and threatened him and demanded Rs.5,000/-. When this witness refused to give money, the detenu slapped him on his face and threatened him. The detenu took out a pistol and pointed it at the stomach of the witness. Seeing the firearm, the witness got scared and handed over Rs.3,500/- to the detenu. The detenu's associate threatened the witness and asked him to give remaining amount on the following day and told him that otherwise his hands and legs would be chopped off. While leaving the detenu and his associate threatened the servants of this witness and also the passers-by on

the road by pointing out a chopper. There can be no doubt that incamera statements of witnesses A and B indicate that the detenu has become a menace to the society and his activities have affected the even tempo of the life of society. This submission of Mr. Tripathi must, therefore, fail.

15. In view of the above, in our opinion, order of detention is perfectly legal and valid and hence the petition will have to be dismissed and is dismissed as such.

(SMT. RANJANA DESAI, J.)

(A. S. OKA, J.)